

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Nora Stephens	Team: Squad #11	CCRB Case #: 201600040	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 01/01/2016 1:00 AM	Location of Incident: Rockaway Parkway between Lenox Road and Kings Highway	Precinct: 67	18 Mo. SOL 7/1/2017	EO SOL 7/1/2017	
Date/Time CV Reported Fri, 01/01/2016 12:59 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Fri, 01/01/2016 12:59 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Yurantz Assade	14020	939886	SOD SRG
2. SDS Janette Cruz	02080	914329	INT CIS
3. POM James Rodriguez	25905	940575	SOD SRG

Officer(s)	Allegation	Investigator Recommendation
A.POM Yurantz Assade	Abuse: PO Yurantz Assade stopped the vehicle in which § 87(2)(b) was an occupant.	
B.SDS Janette Cruz	Abuse: SDS Janette Cruz stopped the vehicle in which § 87(2)(b) was an occupant.	
C.POM James Rodriguez	Abuse: PO James Rodriguez stopped the vehicle in which § 87(2)(b) was an occupant.	
D.POM Yurantz Assade	Force: PO Yurantz Assade used physical force against § 87(2)(b)	
E.POM Yurantz Assade	Abuse: PO Yurantz Assade frisked § 87(2)(b)	
F.POM Yurantz Assade	Abuse: PO Yurantz Assade searched the vehicle in which § 87(2)(b) was an occupant.	
G.SDS Janette Cruz	Abuse: SDS Janette Cruz searched the vehicle in which § 87(2)(b) was an occupant.	

Case Summary

On January 1, 2016, at approximately 1:00 a.m., § 87(2)(b) was pulled over on Rockaway Parkway between Lenox Road and Kings Highway in Brooklyn by PO Yurantz Assade and PO James Rodriguez of the Strategic Response Group and SDS Janette Cruz of the Criminal Intelligence Division (**Allegations A, B, and C**). When § 87(2)(b) refused to exit the vehicle, PO Assade pulled § 87(2)(b) out of his vehicle (**Allegation D**) and frisked § 87(2)(b) (**Allegation E**). § 87(2)(b) stood at the back of his vehicle with PO Rodriguez while PO Assade searched § 87(2)(b)'s vehicle (**Allegation F**). SDS Cruz allegedly searched the vehicle as well (**Allegation G**). § 87(2)(b) was not issued a summons or placed under arrest.

There is no video footage in this case.

This case was submitted after 90-days because SDS Cruz was scheduled more than once and not interviewed until after the 90-day mark.

Mediation, Civil and Criminal Histories

- § 87(2)(b) accepted mediation, but due to officer identification issues, the case remained with the investigative unit.
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
- On April 6, 2016, a FOIL request for any Notice of Claim was submitted to the NYC Comptroller's Office and on April 11, 2016, a response stating that no records were located was received (Board Review 12).

Civilian and Officer CCRB Histories

- § 87(2)(b) has three previous complaints with the CCRB. § 87(2)(b)
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
- PO Assade has been a member of service for ten years. He has been a subject in eight total CCRB cases with 15 allegations. In case number 200905169, a vehicle search allegation was substantiated. The CCRB did not provide a recommendation and the NYPD issued instructions. Case number 200917109 contains a vehicle stop allegation and was closed as complainant uncooperative. § 87(4-b) § 87(2)(g)
[REDACTED] Case 201010882 contains a vehicle stop allegation which was closed as exonerated and § 87(4-b), § 87(2)(g)

§ 87(4-b), § 87(2)(g) Case 201015563 contains a vehicle search allegation and was closed as complainant uncooperative. § 87(4-b), § 87(2)(g)

- SDS Cruz has been a member of service for 22 years. She has been a subject in 17 CCRB cases with 30 allegations. In case number 200511589, a refusal to provide name/shield number allegation was substantiated. The CCRB recommended command discipline and the NYPD issued instructions. § 87(4-b) § 87(2)(g)
 - PO Rodriguez has been a member of service for ten years. He has been a subject in five total CCRB cases with 11 allegations. § 87(4-b) § 87(2)(g)
- No allegations have been substantiated against him and there are no patterns.

Findings and Recommendations

Allegations Not Pleaded

- § 87(2)(g)
- § 87(2)(g)

Allegation A - PO Yurantz Assade stopped the vehicle in which § 87(2)(b) was an occupant.

Allegation B – SDS Janette Cruz stopped the vehicle in which § 87(2)(b) was an occupant.

Allegation C - PO James Rodriguez stopped the vehicle in which § 87(2)(b) was an occupant.

It is undisputed that on January 1, 2016, at approximately 1 a.m., PO Assade, SDS Cruz, and PO Rodriguez stopped § 87(2)(b)'s vehicle on Rockaway Parkway near Lenox Road in Brooklyn and that he did not receive a summons.

§ 87(2)(b) stated that he did not commit any moving violations before being pulled over (Board Review 1).

All three officers stated that § 87(2)(b) was pulled over for numerous traffic infractions. PO Assade, PO Rodriguez, and SDS Cruz said § 87(2)(b) drove over the speed limit, cut in front of other cars and was weaving in and out of traffic (Board Review 2, Board Review 4, Board Review 5). PO Assade and Sgt. Cruz also stated that § 87(2)(b) drove through red traffic lights (Board Review 2, Board Review 5).

§ 87(2)(g)

Allegation D - PO Yurantz Assade used physical force against § 87(2)(b)

It is not in dispute that § 87(2)(b) refused to exit his vehicle after PO Assade commanded him to do so.

§ 87(2)(b) stated that his vehicle had tinted windows and he rolled down all four of his windows immediately after being directed to. When PO Assade asked § 87(2)(b) for his license and registration, § 87(2)(b) immediately provided his license. When § 87(2)(b) then reached over to the glove compartment for the other credentials, PO Assade asked § 87(2)(b) who the car belonged to. § 87(2)(b) did not respond to this question because he was leaning over and searching in the glove compartment. When § 87(2)(b) retrieved the necessary credentials and handed them to PO Assade, PO Assade asked § 87(2)(b) “Sir, sir do I have to ask you again? Did you not hear me talking to you?” § 87(2)(b) responded that he was getting the paperwork for PO Assade. PO Assade then asked again whose car it was, to which § 87(2)(b) replied that the information was on the registration—that it was his sister’s car, and she has the same last name as he. § 87(2)(b) then told PO Assade that he was making “it a big deal.” PO Assade responded that § 87(2)(b) was “making it a big deal.” § 87(2)(b) then said, “You know what, how about Happy New Year to you, officer.” PO Assade said, “Get out of the car.” § 87(2)(b) did not exit the car and asked why he had to leave his car. PO Assade tried to open the front driver’s side door by sticking his hand inside the open driver’s side window and opening the door from the inside—the door did not release. PO Assade then tried to release the button inside the window to unlock the door, but the button did not unlock the door right away. § 87(2)(b) remained inside the car and he asked again why he had to exit the car. § 87(2)(b) told PO Assade he would call his lawyer and as he said this, he went to grab his cell phone which was placed in front of the gear on the cigarette holder. § 87(2)(b) picked up his phone with his right hand, unlocked the phone with the fingerprint function, and began to scroll through his contacts. As he was scrolling through his contacts, PO Assade reached over and grabbed the phone from § 87(2)(b) then immediately threw it in the backseat through the open driver’s side backseat window. PO Assade then opened the front driver’s side door and grabbed § 87(2)(b)’s left arm (§ 87(2)(b) did not remember what part of his arm) and pulled him out of the car (Board Review 1, Board Review 3).

PO Assade stated that § 87(2)(b)’s vehicle had tinted windows and PO Assade had to give three commands for § 87(2)(b) to roll down all four windows. After § 87(2)(b) had rolled down all four of his windows, he asked for § 87(2)(b)’s license and registration. § 87(2)(b) hesitated and asked why he was pulled over. PO Assade responded, “Sir, license and registration.” § 87(2)(b) responded, “You have to tell me why you pulled me over.” PO Assade stated again, “Sir, license and registration.” After three or four commands for his license and registration, § 87(2)(b) handed PO Assade his license and registration. After taking § 87(2)(b)’s license and registration, PO Assade asked § 87(2)(b) whose car he was driving. § 87(2)(b) responded that this information was located on the paper he had handed to PO Assade. PO Assade asked again whose car it was. PO Assade continued with this line of questioning because if § 87(2)(b) did not tell PO Assade the vehicle’s owner’s name, it was possible that the vehicle was stolen. § 87(2)(b) quickly reached his right hand over toward the middle console and PO Assade commanded § 87(2)(b) to stop reaching toward the middle console. PO Assade was nervous about § 87(2)(b)’s sudden movement because it was dark inside the vehicle and PO Assade could not see what § 87(2)(b) was reaching for. PO Assade continued to command § 87(2)(b).

§ 87(2)(b) to stop reaching toward his middle console and to let him see § 87(2)(b)'s hands. § 87(2)(b) quickly brought out an object, so PO Assade grabbed § 87(2)(b)'s hand. At this point, PO Assade realized § 87(2)(b) had brought out a cell phone. PO Assade took the cell phone and through the back driver's side window, placed it in § 87(2)(b)'s back seat. § 87(2)(b) said "I don't have to talk to you." PO Assade then opened § 87(2)(b)'s front driver's side door by the handle on the outside of the vehicle. PO Assade asked § 87(2)(b) to step out of his vehicle. PO Assade did not recall putting his hand through § 87(2)(b)'s window to unlock the door. § 87(2)(b) responded, "I'm not getting out of my car." After three to four commands of PO Assade asking § 87(2)(b) to leave his vehicle, § 87(2)(b) unbuckled his seat belt and stepped out of his vehicle. At no point did PO Assade pull § 87(2)(b) out of his vehicle, nor did any other officer pull § 87(2)(b) out of his vehicle (Board Review 2).

SDS Cruz also stated that PO Assade had to give § 87(2)(b) multiple commands for each action asked of him. PO Assade told her, after he had searched § 87(2)(b)'s vehicle, that when he was standing at § 87(2)(b)'s front driver's window, he saw § 87(2)(b) reach toward the center console area. PO Assade told SDS Cruz that he could not see what § 87(2)(b) was lunging for, so once § 87(2)(b) brought up his hand with an object, PO Assade immediately grabbed § 87(2)(b)'s hand, took the object from § 87(2)(b) then threw it in the backseat (Board Review 5).

PO Rodriguez, who was standing at the front passenger's side of the vehicle, stated that he did not recall PO Assade issuing any commands prior to asking § 87(2)(b) for his license, insurance, and registration, which he had to do three different times. PO Rodriguez could only hear PO Assade speaking, he could not hear if § 87(2)(b) was speaking. Because § 87(2)(b) was not cooperative, PO Rodriguez believed that § 87(2)(b) was trying to hide something. The front passenger window was rolled up. Before providing his license, insurance, and registration to PO Assade, § 87(2)(b) turned his body and reached toward the center console. PO Assade told § 87(2)(b) to not do that and asked § 87(2)(b) to tell him what he was looking for. § 87(2)(b) continued to reach toward the center console. PO Assade then immediately asked § 87(2)(b) to step out of the vehicle. Once PO Rodriguez heard PO Assade tell § 87(2)(b) to step out of the vehicle, PO Rodriguez moved to the back of § 87(2)(b)'s vehicle. PO Rodriguez did not know if § 87(2)(b) brought anything out from center console and PO Rodriguez did not see § 87(2)(b) get out of the vehicle. PO Rodriguez did not recall what the center console looked like; he did not know if it was closed or open. PO Rodriguez did not hear § 87(2)(b) saying anything while he was reaching toward the center console area (Board Review 4).

Maryland v. Jerry Lee Wilson 434 U.S. at 111, n.; (1997) holds that "once a motor vehicle has been lawfully detained for a traffic violation, the police officers may order the driver to get out of the vehicle without violating the *Fourth Amendment's* proscription of unreasonable seizures" (Board Review 10). Additionally, NYPD Patrol Guide Section 203-11 states that all members of service at the scene of a police incident must use minimum necessary force (Board Review 8).

§ 87(2)(g)

§ 87(2)(g)

Allegation E - PO Yurantz Assade frisked § 87(2)(b)

Although PO Rodriguez did not recall if § 87(2)(b) was frisked, it is not in dispute among the other parties that PO Assade frisked § 87(2)(b). It is also not in dispute that prior to exiting the vehicle, § 87(2)(b) was non-compliant with numerous commands he had been given by PO Assade.

§ 87(2)(b) stated he was wearing fitted jeans that had five pockets total: two pockets and a coin pocket in the front and two back pockets; § 87(2)(b) was wearing a fitted zip-up hooded sweatshirt that had two pockets total, one on each side of the sweater. § 87(2)(b) stated that PO Assade grabbed his left arm and pulled him out of the vehicle and immediately after § 87(2)(b) was outside his vehicle, PO Assade patted down § 87(2)(b)'s underarms down to his waist and each of the seven pockets on his sweatshirt and jeans. § 87(2)(b)'s wallet was recovered from one pocket, but he did not remember which one (Board Review 1, Board Review 3).

PO Assade stated he frisked § 87(2)(b) to ensure his safety. PO Assade patted down his waist area and his legs because those are the areas where weapons are typically kept. PO Assade also stated that he did not recall if he saw any bulges on § 87(2)(b) (Board Review 2).

SDS Cruz stated she saw PO Assade pat down § 87(2)(b) on the underarms, waist, and ankles. SDS Cruz stated that at no point during the incident did § 87(2)(b) do anything that made her fear for her safety. SDS Cruz never noticed any bulges on § 87(2)(b) § 87(2)(b) never did anything around SDS Cruz that made her believe he might have a weapon. SDS Cruz never saw a cell phone, nor did she hear § 87(2)(b) talk about a cell phone or wanting to call anyone, including calling his lawyer (Board Review 5).

People v. Smith N.Y. App. Div.; (2015) holds that a pat search during a car stop is not justified unless there is "reasonable suspicion that defendant committed or was about to commit a crime at the time of the [pat search]" and to justify the pat search, an officer needs to otherwise have a reasonable basis for fearing for his safety (Board Review 13).

§ 87(2)(g)

Allegation F - PO Yurantz Assade searched the vehicle in which § 87(2)(b) was an occupant.

Although PO Rodriguez did not recall if § 87(2)(b)'s vehicle was searched, it is not in dispute among the other parties that PO Assade searched § 87(2)(b)'s vehicle.

§ 87(2)(b) stated that when he stood at the back driver's side of his vehicle with PO Rodriguez, he saw PO Assade open the front driver's side door. All of § 87(2)(b)'s windows

were rolled down, so he could see the officers inside the vehicle; § 87(2)(b) saw PO Assade moving inside the vehicle, but he could not see precisely what he was touching or doing inside the vehicle because of where he was standing outside the vehicle. § 87(2)(b) saw PO Assade exit the front driver's side door, shut that door, open the back driver's side door, and enter the back driver's side. PO Assade was inside the vehicle for approximately three to four minutes and spent more time in the front than he did in the back of the vehicle (Board Review 1, Board Review 3).

PO Assade stated that he searched the front driver's side area of § 87(2)(b)'s vehicle by the center console area where § 87(2)(b) had grabbed his cell phone. PO Assade stated he searched § 87(2)(b)'s vehicle to check for weapons. PO Assade also stated that when he first approached § 87(2)(b)'s vehicle, he did not see anything suspicious inside the vehicle (Board Review 2).

SDS Cruz stated she saw PO Assade enter the front driver's side of § 87(2)(b)'s vehicle, but did not see him enter any other part of § 87(2)(b)'s vehicle. She stated PO Assade later told her that he searched the vehicle because he needed to check that there were no weapons in the center console area where § 87(2)(b) had lunged (Board Review 5).

People v. Chann 221 A.D.2d 155; 633 N.Y.S.2d 150; (1995) holds that a furtive movement can be innocuous and states, "In any event, once the officers removed him from the vehicle, there was no immediate threat to their safety" (Board Review 9).

§ 87(2)(g)
[REDACTED]

Allegation G - SDS Janette Cruz searched the vehicle in which § 87(2)(b) was an occupant.

§ 87(2)(b) stated that he stood at the back driver's side of his vehicle with PO Rodriguez and he saw SDS Cruz open the front passenger's side door. All of § 87(2)(b)'s windows were rolled down, so he could see SDS Cruz inside the vehicle; § 87(2)(b) saw SDS Cruz moving inside the vehicle, but he could not see precisely what she was touching or doing inside the vehicle because of where he was standing outside the vehicle. SDS Cruz exited the front passenger's side door and shut that door and opened the back passenger's side door and entered. SDS Cruz was inside the vehicle for approximately three to four minutes, spending more time in the front than the back of the vehicle (Board Review 1, Board Review 3).

PO Assade, SDS Cruz, and PO Rodriguez each stated that SDS Cruz did not search § 87(2)(b)'s vehicle (Board Review 2, Board Review 4, Board Review 5).

SDS Cruz stated that while PO Assade was searching § 87(2)(b)'s vehicle, she was standing near the back of the vehicle with PO Rodriguez and § 87(2)(b) (Board Review 5).

§ 87(2)(g)
[REDACTED]

Squad: 11

Investigator: _____
Signature Print Date

Squad Leader: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date